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19 United States of America

20 UNITED STATES DISTRICT COURT  
21 FOR THE DISTRICT OF ALASKA

22 UNITED STATES OF AMERICA,	)	Case No.:
	)	
23 Plaintiff,	)	IN ADMIRALTY
	)	
24 vs.	)	<b>VERIFIED COMPLAINT OF THE</b>
	)	<b>UNITED STATES</b>
25 JACK SPENCER STEWART,	)	
	)	
26 Defendant.	)	
	)	

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VERIFIED COMPLAINT

1 Plaintiff, the United States of America, alleges upon information and belief as follows:

2 **GENERAL ALLEGATIONS**

3  
4 1. This is a case of admiralty and maritime jurisdiction against defendant JACK  
5 SPENCER STEWART, an individual, as hereinafter more fully appears, and within the meaning  
6 of Rule 9(h) of the Federal Rules of Civil Procedure.

7  
8 2. The United States expressly reserves the right to amend this Complaint to include,  
9 *inter alia*, additional claims and additional parties.

10 3. The United States is authorized to bring this suit pursuant to 28 U.S.C. § 1345, 33  
11 U.S.C. §§ 1321 and 2717, and 42 U.S.C. § 9613.

12 4. Venue is properly in this Court pursuant to 28 U.S.C. §§ 1391, 33 U.S.C. § 2717,  
13 and 42 U.S.C. § 9613.

14  
15 5. The United States also brings this action on behalf of the Oil Spill Liability Trust  
16 Fund (“Fund”), pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*, to recover any  
17 and all removal costs and damages incurred directly by the Fund, any removal costs and damages  
18 incurred by the Fund through compensation paid to any claimant, and all costs incurred by the  
19 Fund by reason of any such claims, including interest, prejudgment interest, adjudicative costs,  
20 and attorney's fees.

21  
22 6. Pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2712(f), the United States  
23 has acquired by subrogation, or may in the future acquire by subrogation, the rights of any claimant  
24 or State paid compensation from the Fund, and the United States specifically reserves the right to  
25 amend this Verified Complaint to assert any or all such subrogated rights and claims.

26  
27 7. At all times material herein, the tug REDWING (hereafter “REDWING” or  
28 “Vessel”) was a vessel, *inter alia*, owned and operated in the United States and at all times material

1 herein was within the jurisdiction of this Court.

2 8. At all times material herein, the tug MECOSTA (hereafter “MECOSTA” or  
3 “Vessel”) was a vessel, *inter alia*, owned and operated in the United States and at all times material  
4 herein was within the jurisdiction of this Court  
5

6 9. Defendant JACK SPENCER STEWART, pursuant to information or belief, is a  
7 resident of Adak, Alaska. At all material times JACK SPENCER STEWART was within this  
8 district and within the jurisdiction of this Court, including, but not limited to, through ownership  
9 and operation of the REDWING and MECOSTA at the time of, and with respect to, the matters  
10 sued upon herein.  
11

12 10. At all times material herein, defendant JACK SPENCER STEWART owned the  
13 REDWING.

14 11. At all times material herein, defendant JACK SPENCER STEWART operated the  
15 REDWING.  
16

17 12. At all times material herein, defendant JACK SPENCER STEWART managed the  
18 REDWING.

19 13. At all times material herein, defendant JACK SPENCER STEWART demise  
20 chartered the REDWING.  
21

22 14. At all times material herein, defendant JACK SPENCER STEWART controlled the  
23 REDWING.

24 15. At all material times the REDWING was a “vessel” within the meaning of, *inter*  
25 *alia*, the OPA, 33 U.S.C. § 2701(37), and the CERCLA, 42 U.S.C. § 9601(28).  
26

27 16. At all relevant times, the REDWING contained oil, as such term is defined under  
28 the OPA, 33 U.S.C. § 2701 *et seq.*

1           17.     At all relevant times, the REDWING contained hazardous substances, as such term  
2 is defined in the CERCLA, 42 U.S.C. § 9601 *et seq.*, and implementing regulations.

3           18.     At all times material herein, defendant JACK SPENCER STEWART owned the  
4 MECOSTA.  
5

6           19.     At all times material herein, defendant JACK SPENCER STEWART operated the  
7 MECOSTA.

8           20.     At all times material herein, defendant JACK SPENCER STEWART managed the  
9 MECOSTA.  
10

11           21.     At all times material herein, defendant JACK SPENCER STEWART demise  
12 chartered the MECOSTA.

13           22.     At all times material herein, defendant JACK SPENCER STEWART controlled the  
14 MECOSTA.  
15

16           23.     At all material times the MECOSTA was a “vessel” within the meaning of, *inter*  
17 *alia*, the OPA, 33 U.S.C. § 2701(37), and the CERCLA, 42 U.S.C. § 9601(28).

18           24.     At all relevant times, the MECOSTA contained oil, as such term is defined under  
19 the OPA, 33 U.S.C. § 2701 *et seq.*  
20

21           25.     At all relevant times, the MECOSTA contained hazardous substances, as such term  
22 is defined in the CERCLA, 42 U.S.C. § 9601 *et seq.*, and implementing regulations.

23           26.     At all times material herein, and by reason of the matters alleged in this Complaint,  
24 defendant JACK SPENCER STEWART is a "responsible party" within the meaning of the Oil  
25 Pollution Act of 1990, 33 U.S.C. § 2701, *et seq.*  
26

27           27.     At all times material herein, defendant JACK SPENCER STEWART was within  
28 the scope of entities specified in the CERCLA, 42 U.S.C. § 9607(a), with respect to hazardous

1 substances and the matters alleged in this Complaint.

2       28. For a significant period of time STEWART did not operate the REDWING and  
3 MECOSTA and failed to take such actions as were necessary to maintain the vessels in a staunch  
4 and seaworthy manner, whether moored or underway, including such actions as would be  
5 necessary to maintain short and/or long term safe moorage for the vessels, which, pursuant to a  
6 form of contractual relationship, were left untended for long periods and lashed to a structure  
7 and/or pier and/or dock owned by another entity.  
8

9       29. The Gulf of Alaska, and Adak in particular, are particularly and routinely  
10 susceptible to easily anticipated and well known weather, sea, wind, and other environmental  
11 conditions against which even minimally prudent vessel owners must, as a matter of routine safe  
12 marine practice, be prepared to deal with and prepare for.  
13

14       30. Defendant STEWART failed to exercise due care with respect to the oil and  
15 hazardous substances aboard the REDWING and MECOSTA.  
16

17       31. Defendant STEWART failed to take such care by failing to take into consideration  
18 the characteristics of the oil and hazardous substances aboard the vessels in light of all relevant  
19 facts and circumstances, including, but not limited to, failing to protect against anticipated and  
20 well known weather and environmental conditions, particularly in view of the conditions of  
21 moorage and the vessels themselves, and failing to take such other precautions against foreseeable  
22 acts or omissions of, *inter alia*, other persons and acts or omissions of such persons, including  
23 those with whom the defendant had forms of contractual relationships.  
24

25       32. On or about December 14, 2015, the tugs REDWING and MECOSTA broke free  
26 of their mooring and drifted approximately 600 feet, running aground near a rock jetty (Sweeper  
27 Cove near Adak, Alaska), creating a substantial threat of discharge of oil and other hazardous  
28

1 substances upon navigable waters of the United States.

2 33. The United States Coast Guard Sector Anchorage responded to the call that the  
3 now-derelict tugs were grounded, unmanned, and contained an estimated 33,000 gallons of fuel  
4 and oil, PCBs, and a number of batteries.

5  
6 34. Defendant JACK SPENCER STEWART did not deny ownership of the tugs  
7 REDWING and MECOSTA and initially participated in the response by preparing a pollution  
8 removal plan. That plan was rejected by the Coast Guard due to a lack of appropriate safety  
9 measures and response equipment.

10  
11 35. Defendant STEWART declined the opportunity to submit a revised removal plan.

12 36. On December 16, 2015, the United States Coast Guard Federal On Scene  
13 Coordinator (“FOSC”) established a Unified Command comprised of both Federal, State, and local  
14 stakeholders to deal with the substantial threat of discharge.

15  
16 37. Defendant STEWART failed to take action to respond to the incident and/or  
17 mitigate the substantial threat of discharge.

18 38. Under authority of the Clean Water Act, 33 U.S.C. § 1321 *et seq.*, the FOSC  
19 retained Resolve Towing and Salvage to conduct fuel and hazardous materials removals.

20  
21 39. Under the authority of the FOSC and Unified Command, the response transferred  
22 fuel, oil products, and hazardous substances from the two tugs to the RESOLVE PIONEER.

23 40. Subsequently, contractors completed the offloading of the oil and hazardous  
24 substances at facilities in Dutch Harbor, Alaska (43,585 gallons of JP-5 type diesel; 2,470 gallons  
25 of hydraulic, waste, lube, gear, and bilge oil; 2,273 gallons of AFFF fire suppressant; 34 batteries,  
26 and PCBs). All tanks on the REDWING and MECOSTA were cleaned and thereafter the  
27 contaminated fuel was shipped to a disposal site where they were properly disposed of.  
28

1           41.     PCBs and other hazardous substances found aboard each tug comprise hazardous  
2 substances within the meaning of CERCLA.

3           42.     The National Pollution Fund Center (NPFC) sent a Notice of Potential Liability  
4 (NOPL) letter to defendant STEWART informing him that both the REDWING and MECOSTA  
5 were identified as sources of a pollution threat.  
6

7           43.     On May 21, 2018, the NPFC sent invoices to defendant STEWART for  
8 \$827,717.60 (REDWING-\$431,794.88 and MECOSTA-\$395,922.72). To date, no payments have  
9 been made by defendant STEWART and all such amounts are due and owing.  
10

11           44.     The Complaint does not presently assert claims for civil penalties or Natural  
12 Resource Damages. The United States expressly reserves the right to bring such claims by  
13 amendment of the Complaint or otherwise.  
14

15                   **AS AND FOR A FIRST CAUSE OF ACTION**  
16                   **OIL POLLUTION ACT OF 1990**

17           45.     Plaintiff, United States of America, refers to and incorporates by reference as  
18 though fully set forth herein each and every foregoing paragraph of this Complaint.

19           46.     Pursuant to the Oil Pollution Act of 1990, each responsible party for a vessel from  
20 which oil is discharged, or which poses the substantial threat of discharge, into or upon the  
21 navigable waters or adjoining shorelines or the exclusive economic zone of the United States, is  
22 strictly liable for all costs, damages, and/or disbursements specified in the Act.  
23

24           47.     Pursuant to the Oil Pollution Act, defendant JACK SPENCER STEWART is liable  
25 to the United States of America for all such costs, damages, interest, and/or disbursements, in  
26 addition to statutory attorneys' fees allowed under OPA, as a result of the matters alleged herein.

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1                                   **AS AND FOR A SECOND CAUSE OF ACTION**  
2                                   **OIL POLLUTION ACT OF 1990**

3           48.     Plaintiff, United States of America, refers to and incorporates by reference as  
4 though fully set forth herein each and every foregoing paragraph of this Complaint.

5           49.     Pursuant to the Oil Pollution Act of 1990, the Fund shall be subrogated to all rights,  
6 claims and causes of action of claimants to whom it has paid compensation.

7           50.     As a result of the OPA Incidents described herein, the Fund may incur costs,  
8 damages, and/or disbursements by reason of claims for removal costs and damages brought against  
9 it under the Oil Pollution Act of 1990.

10           51.     Pursuant to the Oil Pollution Act, defendant JACK SPENCER STEWART is liable  
11 to the United States of America for all such costs, damages, and/or disbursements which may be  
12 sustained by the Fund, in addition to statutory attorneys' fees allowed under OPA, as a result of  
13 the matters alleged herein.

14                                   **AS AND FOR A THIRD CAUSE OF ACTION**  
15                                   **OIL POLLUTION ACT OF 1990**

16           52.     Plaintiff, United States of America, refers to and incorporates by reference as  
17 though fully set forth herein each and every foregoing paragraph of this Complaint.

18           53.     Pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2717(f)(2), the United States  
19 is entitled to, and hereby seeks, a declaratory judgment that is binding in any subsequent action or  
20 actions against defendant JACK SPENCER STEWART that said defendant is liable for removal  
21 costs and damages in any such subsequent action or actions.

22                                   **AS AND FOR A FOURTH CAUSE OF ACTION**  
23                                   **(CERCLA, 42 U.S.C. §§ 9601 et seq.)**

24           54.     Plaintiff, United States of America, refers to and incorporates by reference as  
25 though fully set forth herein each and every foregoing paragraph of this Complaint.



1           55. Pursuant to the CERCLA, 42 U.S.C. §§ 9601 *et seq.*, including, but not limited to  
2 42 U.S.C. § 9607, owners, operators, and other entities pertaining to vessels and facilities from  
3 which hazardous substances are released, or which pose the substantial threat of release, into the  
4 environment and/or navigable waters of the United States, as defined at 42 U.S.C. § 9601(25) and  
5 authorized by Section 104 of the CERCLA, 42 U.S.C. § 9604, are strictly liable for all costs  
6 specified in the Act.  
7

8           56. Defendant JACK SPENCER STEWART is liable to the United States by virtue of  
9 Section 107(a) of the CERCLA, 42 U.S.C. § 9607(a), for all response costs, remedial costs, and  
10 other costs incurred and to be incurred by the United States in connection with the Removal and  
11 Response Action pertaining to hazardous substances on and/or discharged from the REDWING  
12 and MECOSTA.  
13

14                           **AND AS FOR A FIFTH CAUSE OF ACTION**  
15                           **(CERCLA, 42 U.S.C. § 9613(g))**

16           57. Plaintiff, United States of America, refers to and incorporates by reference as  
17 though fully set forth herein each and every foregoing paragraph of its complaint.  
18

19           58. Pursuant to Section 113(g)(2) of the CERCLA, 42 U.S.C. § 9613(g) and 28 U.S.C.  
20 § 2201, the United States also seeks a declaratory judgment on liability for response costs that will  
21 be binding on any subsequent action to recover further response costs.  
22

23                           **AS AND FOR A SIXTH CAUSE OF ACTION**  
24                           **28 U.S.C. § 3001 *et seq.***

25           59. Plaintiff, United States of America, refers to and incorporates by reference as  
26 though fully set forth herein each and every foregoing paragraph of this Complaint.  
27

28           60. Despite the liability, including strict liability, of defendant to the United States, all  
as alleged in this verified Complaint, on information and belief defendant JACK SPENCER

1 STEWART, in breach of law, including, but not limited to, in violation of the provisions of the  
2 Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 et seq., has, inter alia, instead of  
3 discharging debts owed to the United States, transferred, sold, spun off, and assigned assets so as  
4 to prejudice and cause irreparable harm to the United States.  
5

6 61. Despite the liability, including strict liability, of defendant to the United States, all  
7 as alleged in this verified Complaint, on information and belief defendant JACK SPENCER  
8 STEWART, in breach of law, may hereafter transfer, sell, spin off, and assign, or attempt to  
9 transfer, sell, spin off, and assign his assets, including real property, so as to prejudice and cause  
10 irreparable harm to the United States.  
11

12 62. All such prior and future actions as alleged in the foregoing paragraphs have caused  
13 damages, and will cause damages, to the United States in an amount to be established according  
14 to proof at trial.  
15

16 63. All such future actions as alleged in the foregoing paragraphs will continue to cause  
17 irreparable harm to the United States. As a result of the foregoing, defendant JACK SPENCER  
18 STEWART shall, pursuant to law and statute, be enjoined from further transferring, selling,  
19 spinning off, and assigning, or attempting to transfer, sell, spin off, and assign, their assets,  
20 including real property, so as to prejudice and cause irreparable harm to the United States.  
21

22 **AS AND FOR A SEVENTH CAUSE OF ACTION**  
23 **(PRIORITY OF GOVERNMENT CLAIMS, 31 U.S.C. § 3713)**

24 64. Plaintiff, United States of America, refers to and incorporates by reference as  
25 though fully set forth herein each and every foregoing paragraph of this Complaint.

26 65. Despite the liability, including strict liability, of defendant to the United States, all  
27 as alleged in this verified Complaint, on information and belief defendant JACK SPENCER  
28 STEWART, in breach of law, has, instead of discharging debts owed to the United States,

1 transferred, sold, spun off, and assigned assets so as to prejudice and cause irreparable harm to the  
2 United States.

3 66. Despite the liability, including strict liability, of defendant to the United States, all  
4 as alleged in this verified Complaint, on information and belief defendant JACK SPENCER  
5 STEWART, in breach of law, including, but not limited to, may hereafter transfer, sell, spin off,  
6 and assign, or attempt to transfer, sell, spin off, and assign their assets, including proceeds of  
7 insurance, so as to prejudice and cause irreparable harm to the United States.  
8

9 67. All such prior and future actions as alleged in the foregoing paragraphs have caused  
10 damages, and will cause damages, to the United States in an amount to be established according  
11 to proof at trial.  
12

13 68. All such future actions as alleged in the foregoing paragraphs will continue to cause  
14 irreparable harm to the United States. Pursuant to law and statute, defendant JACK SPENCER  
15 STEWART and his officers, servants, employees, representatives, agents, fiduciaries, or other  
16 individuals and entities acting on his behalf or with his authorization, are required to discharge  
17 their foregoing debt to the United States prior to discharging any other debt or payment.  
18

19 69. To the extent that defendant JACK SPENCER STEWART, and/or his officers,  
20 servants, employees, representatives, agents, fiduciaries, or other individuals and entities acting on  
21 his behalf or with his authorization, have discharged claims or debts to any other person or entity  
22 other than the United States, or in the future discharge claims or debts to any person or entity other  
23 than the United States in contravention of, inter alia, 31 U.S.C. § 3713, defendant JACK  
24 SPENCER STEWART, and/or his officers, servants, employees, representatives, agents,  
25 fiduciaries, or other individuals and entities acting on his behalf or with his authorization, are liable  
26 to the United States for the amount of any such payments.  
27  
28

1           70. With respect to any payments in contravention of 31 U.S.C. § 3713, and pursuant  
2 to 31 U.S.C. § 3713(b), any and all officers, servants, employees, representatives, agents,  
3 fiduciaries, or other individuals and entities making such payments are personally liable to the  
4 United States for the amount of any such payments.  
5

6           71. The United States reserves the right to amend this Complaint to add additional  
7 claims, causes of action, and parties, including, but not limited to, in their individual capacity, any  
8 and all officers, servants, employees, representatives, agents, fiduciaries, or other individuals and  
9 entities who, in contravention of 31 U.S.C. § 3713(a) and (b), have already discharged, or in the  
10 future discharge claims or debts to any person or entity other than the United States.  
11

12           **WHEREFORE**, the United States of America prays as follows:  
13

14           1. That United States of America be granted judgment against JACK SPENCER  
15 STEWART, pursuant to the complaint of the United States herein;  
16

17           2. That the United States of America be granted declaratory judgment against JACK  
18 SPENCER STEWART, for removal costs or damages binding on any subsequent action or actions  
19 to recover further removal costs or damages, plus interest, costs, disbursements, and attorneys'  
20 fees;  
21

22           3. The United States expressly reserves the right to amend this complaint to add  
23 parties and/or causes of action, as may be necessary; and  
24

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1           4.       For such other relief as the Court deems just and proper in the premises.

2 Dated: January 17, 2019

3           JOSEPH H. HUNT  
4           Assistant Attorney General  
5           R. MICHAEL UNDERHILL  
6           Attorney in Charge, West Coast Office  
7           Torts Branch, Civil Division

8           s/ Vickey L. Quinn  
9           VICKEY L. QUINN  
10          Trial Attorney, West Coast Office  
11          Torts Branch, Civil Division  
12          U.S. Department of Justice

13          Of Counsel

14          HELKEI HEMMINGER  
15          National Pollution Funds Center  
16          United States Coast Guard

17          Attorneys for Plaintiff  
18          United States of America

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Vickey L. Quinn says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf. I have read the foregoing Complaint, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: January 17, 2019

s/Vickey L. Quinn  
VICKEY L. QUINN